

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JAIME RADLIN,

Plaintiff,

vs.

Case No. 14-1401-EFM

CAROLYN W. COLVIN, Acting
Commissioner of Social Security

Defendant.

MEMORANDUM AND ORDER

Plaintiff Jaime Radlin moves the Court to award attorney’s fees under the Equal Access to Justice Act (EAJA), specifically 28 U.S.C. § 2412(d). But he moves a day late. Because the Court agrees with the Government’s unopposed response that Congress predicates an EAJA fee award on a timely request, the Court denies Radlin’s motion.

The EAJA departs from two general rules: “that each party to a lawsuit pays his or her own legal fees”¹ and, even more basic, that the United States generally is immune from suit.² Careful, however, not to “create exceptions” broader than Congress intended, the Tenth Circuit

¹ *Scarborough v. Principi*, 541 U.S. 401, 404 (2004).

² *Flute v. United States*, 808 F.3d 1234, 1239 (10th Cir. 2015) (citing *United States v. Testan*, 424 U.S. 392, 399 (1976)).

“strictly construe[s]” the EAJA’s unambiguous statutory language.³ To justify the departures represented by Radlin’s fee request, the EAJA unambiguously requires the Court to find that: (1) the party qualifies as “a prevailing party;” (2) the United States position was “substantially justified;” (3) no “special circumstances make an award unjust;” and (4) the party filed a § 2412(d)(1)(C)-complaint fee application “within thirty days” of the action’s “final judgment.”⁴

The Government argues that Radlin filed his fee application outside the required 30-day period and thus failed to satisfy the express conditions under which Congress agreed to depart from the general immunity and fee-allocation rules. The Court agrees. This action’s judgment occurred on October 15, 2015. That judgment became “final” 60 days later, on December 14, 2015, when the period to file an appeal expired.⁵ The EAJA required Radlin to file any fee application request within 30 days, no later than January 13, 2016. The Court’s records indicate that Radlin filed his request on the morning of January 14, 2016—one day late.⁶ The Government’s authority that a day-late filing is unacceptable is persuasive.⁷ Radlin offers no

³ *United States v. Harrell*, 642 F.3d 907, 909 (10th Cir. 2011).

⁴ 28 U.S.C. § 2412(d).

⁵ *See* Fed. R. App. P. 4(a)(1)(B); 28 U.S.C. §§ 2107(b), 2412(d)(2)(G).

⁶ Curiously, Radlin’s attorney certifies that he filed the motion for fees on January 13, 2016. Whether the incorrect certification amounts to an accidental oversight or a fraudulent misrepresentation, the Court can only guess. The Court failed to reach Radlin’s attorney when it used his recorded contact information to investigate whether he intended to file a reply brief in this case.

⁷ *See Moua v. Colvin*, 2015 WL 3991170, at *2 (E.D. Cal. June 30, 2015); *Huren v. U.S. Comm’r of Social Sec.*, 2013 WL 5575174, at *1 (W.D. La. Oct. 9, 2013); *Beck v. Astrue*, 2012 WL 3641425, at *1 (D. Ariz. Aug. 24, 2012); *Brossard v. Astrue*, 2010 WL 1734836, at *2 (W.D. Wash. Apr. 28, 2010); *cf. United States v. Locke*, 471 U.S. 84, 100–01 (1985) (discussing the “cascade” of rule-engulfing exceptions that would follow from accepting one-day late filings).

explanation for the delinquency.⁸ And the Court is “not free to create exceptions to Congress’ unambiguous statutory language, even to prevent manifest injustice.”⁹

IT IS THEREFORE ORDERED that Plaintiff’s Motion For Attorney’s Fees (Doc. 13) is hereby **DENIED**.

IT IS SO ORDERED.

Dated this 23rd day of February, 2016.

A handwritten signature in black ink, reading "Eric F. Melgren". The signature is written in a cursive, flowing style.

ERIC F. MELGREN
UNITED STATES DISTRICT JUDGE

⁸ Also worth noting, Radlin’s motion for attorney’s fees fails not only to comply with the time requirements of § 2412(d)(1)(B), but it omits necessary content. His fee application failed, as required, to allege and establish that Radlin is an eligible “party” within the meaning of § 2412(d)(1)(B) and (d)(2)(B)—i.e. that his “net worth did not exceed \$2,000,000 at the time the civil action was filed.”

⁹ *Harrell*, 642 F.3d at 909.